SHELL MDS (MALAYSIA) SDN BHD v. PETROLIAM NASIONAL BHD (PETRONAS) & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
ARZIAH MOHAMED APANDI JC
[SUIT NO: WA-24NCVC-4367-11-2024]
6 JANUARY 2025

Abstract – *A fundamental principle of equity is that one who seeks equitable relief must come with clean hands. Where an applicant has shown absence of bad intention and bad faith and where the balance of convenience favours the granting of an injunction to prevent irreparable harm while maintaining status quo, the court would grant the injunction to preserve the status quo. More so, having considered the public interest in maintaining essential services. In the present case, the application for injunction in a matter involving conflicting Federal-state legislation, in competing gas supply agreements, was allowed pending resolution of the underlying jurisdictional conflict.*

CIVIL PROCEDURE: *Injunction – Application for – Interim injunction in interpleader proceedings – Claims under two competing gas supply agreements – Application to preserve status quo pending determination of rightful recipient of payment under interpleader proceedings – Balance of convenience – Whether granting of injunction would prevent irreparable harm – Whether maintaining status quo would prevent double payment and potential breach of laws – Whether court ought to consider public interest in maintaining essential services – Whether financial implications impactful – Whether there were serious issues to be tried*

The application in encl. 3 was for an interim injunction to preserve the *status quo* by restraining both the defendants from disrupting the gas supply or enforcing payment demands until the court determined the rightful recipient of payment under the interpleader proceedings. The matter herein involved competing claims for payment from Petroliam Nasional Bhd (PETRONAS) ('Petronas') and Petrol Sarawak Bhd ('Petros') on Shell MDS (Malaysia) Sdn Bhd ('SMDS'), centred on overlapping gas supply agreements ('GSA'). SMDS first entered the Petronas-GSA on 17 July 2020, under which Petronas was to supply and deliver natural gas from 1 January 2021 to 31 December 2026. Subsequently, on 16 August 2024, SMDS entered the Petros-GSA from 1 August 2024 to 31 December 2026. The physical gas supplied under the Petronas-GSA and Petros-GSA originated from PETRONAS. The competing legislative framework in the dispute were, at the federal level, the Petroleum Development Act 1974 ('PDA') which grants Petronas exclusive rights over petroleum operations nationwide, and, at the state level, the Distribution of Gas Ordinance 2016 ('DGO') and its

2023 amendment established Petros as the sole gas aggregator in Sarawak. Having faced with immediate risks and threats of disruption to its gas supply under the two competing GSA, SMDS sought, *inter alia*: (i) an order to maintain the *status quo* and prevent Petronas and Petros from taking any steps that would interrupt natural gas's continuous supply and delivery to SMDS. It extended to restraining both defendants from exercising any rights to threaten, issue or commence legal proceedings or enforcing rights under their respective GSAs; (ii) to restrain Petronas from making calls on the guarantee, accepting or utilising its proceeds and requests a refund of proceeds already received; and (iii) permission to set aside future payments in an interest-bearing accounts or pay them into court.

Held (allowing reliefs in encl. 3 with costs in cause):

(1) SMDS wanted to fulfil all its obligations under the Petronas-GSA and later the Petros-GSA to ensure its supply of gas remained uninterrupted. It was no fault of SMDS that the tussle between Petronas and Petros had come about. SMDS was willing and able to make payments to the correct entity as determined by the court, as evidenced by its action in setting aside funds and seeking the court's intervention to resolve the payment dispute. There were no elements of bad intention or bad faith by SMDS in making the interpleader action. What necessitated this injunction application was a determination of who SMDS should pay for its gas supply. SMDS portrayed itself as a law-abiding entity trying to fulfil all its obligations under the two GSAs. (paras 34, 36 & 38)

(2) SMDS's responsibility to pay for gas received would persist regardless of any questions about the validity of the agreement. SMDS was able and willing to pay for the gas supply. It had fulfilled the test set out in *Keet Gerald Francis Noel John v. Mohd Noor Abdullah* as both Petronas and Petros acknowledged there were serious issues to be tried in their respective positions and legal actions. The balance of convenience favoured the granting of injunction as it would prevent irreparable harm to SMDS while maintaining the *status quo* and preventing double payment and potential breach of laws while protecting the interests of all parties. (paras 40 & 41)

(3) There was no issue of SMDS trying to evade payments while receiving gas supply as SMDS had made prayer for the payments to be put into a stakeholder account. It would be unconscionable for Petronas and Petros to call on the bank guarantees or require new ones, particularly, that Petronas was aware of the enactment of the DGO and Petros's designation as a gas aggregator and yet did not object to SMDS executing the Petros-GSA when initially informed of the same. Further, the potential criminal liability exposure to SMDS outweighed the monetary remedies. The interpleader proceedings did not only concern the

monetary remedies but mainly the statutory compliance of federal-state jurisdictional issues. Hence, SMDS's position did not render damages as an enabler to compensate its risk of criminal liability. (paras 44 & 47)

(4) The *status quo* must account for all intervening events, including the DGO implementation, appointment of Petros and the MUTS directive. *Status quo* refers to the state of affairs immediately preceding the disputed action and that would be the arrangement before SMDS signed the Petros-GSA, characterised by the regular gas supply from Petronas to SMDS. It could not simply revert to the pre-Petros-GSA situation. The court must also consider public interests in maintaining essential services. Further, SMDS's willingness to set aside payment, mitigated any financial prejudice to Petronas. (paras 50 & 51)

(5) The direct resolution through continued negotiations between Petronas and Petros would be the fastest with both governments' intervention. However, until such resolution materialises, maintaining the *status quo* was essential to protect all parties' legitimate interests, ensure compliance with applicable laws, prevent irreparable harm and preserve the effectiveness of the final determination of the interpleader proceedings. There were serious issues to be tried and the balance of convenience was in favour of the SMDS. The granting of the injunction would preserve the position of all parties pending the final determination of the substantive issues while ensuring that SMDS could continue its operations without prejudice to either Petronas or Petros's ultimate rights as determined by the court. (paras 54, 55 & 57)

Case(s) referred to:

Alfred Dunhill Limited v. Sunoptic SA & Anor [1979] FSR 337 ***(refd)***

American Cyanamid v. Ethicon Ltd [1975] AC 396 ***(refd)***

Garden Cottage Foods Ltd v. Milk Marketing Board [1984] AC 130 ***(foll)***

Karuppannan Chellapan v. Balakrishnen Subban [1994] 4 CLJ 479 FC ***(refd)***

Keet Gerald Francis Noel John v. Mohd Noor @ Harun Abdullah & Ors [1995] 1 CLJ 293 CA ***(foll)***

La Kaffa International Co Ltd v. Loob Holding Sdn Bhd & Another Appeal [2018] 9 CLJ 593 CA ***(refd)***

Law Pang Ching & Ors v. Tawau Municipal Council [2002] CLJU 103; [2002] 1 LNS 103 HC ***(refd)***

Pekeliling Triangle Sdn Bhd & Anor v. Chase Perdana Bhd [2003] 1 CLJ 153 CA ***(refd)***

Sivaperuman v. Heah Seok Yeong Realty Sdn Bhd [1978] CLJU 184; [1978] 1 LNS 184 FC ***(refd)***

Sumatec Engineering And Construction Sdn Bhd v. Malaysian Refining Company Sdn Bhd [2012] 3 CLJ 401 FC ***(foll)***

Tan Chee Hoe & Sons Sdn Bhd v. Code Focus Sdn Bhd [2014] 3 CLJ 141 FC ***(refd)***

TR Hamzah & Yeang Sdn Bhd v. Lazar Sdn Bhd [1985] 1 CLJ 72; [1985] CLJ (Rep) 312 FC ***(foll)***

Legislation referred to:
Contracts Act 1950, s. 66
Courts of Judicature Act 1964, s. 25
Distribution of Gas Ordinance 2016 (Cap. 72), ss. 11A, 18, 21
Petroleum Development Act 1974, s. 2
Rules of Court 2012, O. 17 r. 1(1)(a), O. 29
Specific Relief Act 1950, ss. 50, 51

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For the 1st defendant - Azian Mohd Aziz, Ahmad Faiz Razali, Khoo Yuan Ping, Khoon Jiun Yuet; M/s Mohamad Hanafiah Zakaria
For the 2nd defendant - Foo Joon Liang & Kho Jia Yuan; M/s Gan Partnership

Reported by S Barathi

JUDGMENT

Arziah Mohamed Apandi JC:

Gajah berjuang sama gajah, pelanduk mati di tengah-tengah.

Introduction

[1] This urgent application (encl. 3) by Shell MDS (Malaysia) Sdn Bhd ("SMDS") for an interim injunction in the interpleader proceedings (encl. 1) under O. 17 r. 1(1)(a) of the Rules of Court 2012 (ROC 2012), which provides:

> Where a person is under liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto.

[2] Enclosure 3 becomes urgent as the matter involves competing claims from Petronas and Petros on SMDS's payment for natural gas supply. SMDS faces immediate risks and threats of disruption to its gas supply under two competing gas supply agreements ("GSA"), *ie*, the Petronas-GSA dated 17 July 2020 ("Petronas-GSA") and the Petros-GSA dated 16 August 2024 ("Petros-GSA"). Article 17.1(c) of the Petronas-GSA puts SMDS to a 14 November 2024 deadline to top up its bank guarantee, failing which Petronas has the right to terminate the agreement. Article 11.11 permits Petronas to suspend gas supply with seven days' notice, which can be issued at any time. The financial implications are substantial, with monthly payments in the region of RM70-100 million. SMDS risks paying twice for the same gas supply and facing potential disruption to its operations in Bintulu if it is suspended, with negative consequences on its bank guarantee facilities. SMDS has attempted to mitigate the situation by offering to set aside payments in an interest-bearing account pending resolution. Still, Petronas has proceeded to call on the bank guarantee.

[3] It begins with the execution of the Petronas-GSA in July 2020, followed by Petros's designation as the sole gas aggregator in February 2024, and culminating in the signing of the Petros-GSA in August 2024. The competing legislative frameworks is the heart of the dispute. At the Federal level, the Petroleum Development Act 1974 (PDA 1974) grants Petronas exclusive rights over petroleum operations nationwide. At the State level, the Distribution of Gas Ordinance 2016 (DGO 2016) and its 2023 amendment establish Petros as the sole gas aggregator in Sarawak. This section highlights the fundamental tension between Federal and State authorities that underlies the dispute. Under s. 2 of the PDA 1974 it states that:

> The entire ownership in, and the exclusive rights, powers, liberties and privileges of exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia shall be vested in a Corporation to be incorporated under the Companies Act 1965.

[4] Under s. 11A of the DGO 2016 it states that:

> (1) The Minister may, by notification in the Gazette, designate any person to be a gas aggregator for the purposes of this Ordinance.
>
> (2) A gas aggregator shall be the only person authorized to aggregate natural gas from various sources for distribution to consumers in the State.

[5] Parties came before me after their initial hearing before YA Hayatul Akmal binti Abdul Aziz on 19 December 2024. That day, SMDS made its oral submissions extensively but did not file written submissions. When Petronas sought leave to file submissions SMDS's oral submissions, SMDS objected and insisted that Petronas submit orally. This procedural impasse led YA Hayatul Akmal to direct all parties to file submissions and schedule a new hearing date before me on 6 January 2025. Her Ladyship then granted an *ad interim* order of encl. 3 until the hearing of encl. 3. What had also transpired on that day was Petros undertook to maintain the gas supply to SMDS. This undertaking, formalised in Petros's letter filed with the court after the hearing, affects the necessity and appropriateness of the requested injunctive relief. With the undertaking, SMDS and Petronas argued before me, with Petros clarifying some inaccurate information about Petros's standing in the dispute.

[6] The encl. 3 application seeks to preserve the *status quo* by restraining both defendants from disrupting the gas supply or enforcing payment demands until the court can determine the rightful recipient of payment under the interpleader proceedings.

Basis For Interim Relief

[7] The court's jurisdiction derives from s. 25 of the Courts of Judicature Act 1964, which provides:

> Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where -
>
> (a) the cause of action arose;
>
> (b) the defendant or one of several defendants resides or has his place of business ...

[8] The power to grant injunctive relief stems from ss. 50 and 51 of the Specific Relief Act 1950:

> Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.
>
> Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court.

[9] Order 29 of the ROC 2012 empowers the court to grant interlocutory injunctions for the preservation of property and rights.

[10] The test for interim injunction is established in *American Cyanamid v. Ethicon Ltd* [1975] AC 396, as applied in Malaysian law through *Keet Gerald Francis Noel John v. Mohd Noor @ Harun Abdullah & Ors* [1995] 1 CLJ 293; [1995] 1 MLJ 193 that requires consideration of serious issues to be tried, adequacy of damages and balance of convenience.

Analysis Of SMDS's Prayers

[11] SMDS's first prayer seeks an order to maintain the *status quo* and prevent Petronas dan Petros from taking any steps that would interrupt natural gas's continuous supply and delivery to SMDS at Tanjung Kidurong, Bintulu, Sarawak. It extends to restraining both defendants from exercising any rights to threaten, issue, or commence legal proceedings or enforcing rights under their respective GSAs. Couched in prohibitory terms, it seeks a mandatory injunction requiring Petronas to continue gas supply without receiving payment.

[12] The second and third prayers concern the UOB bank guarantee. SMDS seeks to restrain Petronas from making calls on the guarantee, accepting or utilising its proceeds and requests a refund of proceeds already received.

[13] The fourth prayer requests permission to set aside future payments in interest-bearing accounts or pay them into court. This prayer effectively seeks to unilaterally modify clear contractual payment obligations while continuing to receive the benefit of gas supply.

[14] Petronas argues that damages are an adequate remedy and that SMDS created its predicament by signing with Petros the Petros-GSA while having an existing Petronas-GSA. They contend that the balance of convenience favours Petronas as they continue to incur significant costs (approximately

RM2 billion in unpaid supplies) while SMDS profits from the gas supply. Petronas emphasises that they are the only party physically capable of supplying gas and have ongoing commitments to upstream producers that require substantial financial outlay. They argue that SMDS cannot "have its cake and eat it" by receiving gas while withholding payment. Petronas also maintains that the *status quo* is to be considered before SMDS signs the Petros-GSA. Petros's undertaking is self-serving since they cannot physically supply gas.

[15] SMDS argues that it is not merely about damages but also fundamental legal validity and compliance issues. SMDS says the dispute is between Petronas and Petros regarding the validity and precedence of the PDA 1974 versus the DGO 2016. SMDS emphasises that paying either party without court determination could expose them to criminal liability under the DGO 2016. It was highlighted that Petronas knew but did not object to SMDS being required to execute the Petros-GSA, and that the Prime Minister and Sarawak Premier had announced that parties would respect both the PDA 1974 and DGO 2016. SMDS maintains that they are caught in a Federal-State jurisdictional dispute and are willing to pay as directed by the court, having already set aside funds for this purpose.

[16] Petros argues that the DGO 2016 has superseded the PDA 1974, and they are the sole legally designated gas aggregator in Sarawak. They contend that Petronas is not designated as a gas aggregator and cannot lawfully undertake relevant activities in Sarawak. Petros has provided an undertaking to maintain gas supply, though they acknowledge they cannot physically supply it. They argue that continuing to perform the Petronas-GSA would further an illegal agreement under Sarawak State law.

[17] Following *Keet Gerald Francis*, this court, must refrain from making any determination on the merits of the claim or any defence to it; consider where the justice of the case lies and have in his forefront mind that the remedy asked is intended to give a just result for the period between the date of application and trial proper and intended to maintain *status quo*. In determining where the balance of convenience lies, this court weighs the harm in granting the injunction with the harm that would result if denied. In *Pekeliling Triangle Sdn Bhd & Anor v. Chase Perdana Bhd* [2003] 1 CLJ 153; [2003] 1 MLJ 130, the steps that must be considered under the balance of convenience before an injunction is granted. An interlocutory injunction ought to be granted to maintain the *status quo* of the matter (following *Keet Gerald Francis*).

Legal Framework And Competing Claims

[18] Under the PDA 1974, Petronas holds exclusive rights regarding petroleum (including natural gas) in Malaysia, including Sarawak. This Federal legislation has historically provided the framework for natural gas

supply arrangements throughout Malaysia. Under these rights, SMDS and Petronas executed the Petronas-GSA on 17 July 2020 for natural gas supply and delivery from 1 January 2020 to 31 December 2026.

[19] Then, the State Legislative Assembly of Sarawak enacted the Distribution of Gas Ordinance 2016 ("DGO 2016"), which came into force on 1 July 2018. The DGO 2016 was subsequently amended by an Amendment Ordinance 2023 to provide for the designation and role of a 'gas aggregator', which came into effect on 1 February 2024. Under the amended DGO 2016, only an entity designated as a gas aggregator is permitted in law to 'aggregate', supply, and distribute natural gas in Sarawak. Following suit, on 1 February 2024, Petros was designated as the sole gas aggregator for Sarawak under the DGO 2016. Petros said this designation was merely a statutory recognition of what Petronas had allegedly acknowledged since 2019. The designation makes Petros the only entity legally entitled to operate as a gas aggregator in Sarawak, directly conflicting with Petronas's Federal rights.

The Nature Of The Dispute

[20] The fundamental dispute transcends beyond mere monetary considerations. Constitutional and statutory validity must be determined where intricate questions regarding Federal and State legislation interplay mainly on the validity and territorial scope of the PDA 1974 on natural gas operations in Sarawak. The other issue is the constitutional validity and effect of the DGO 2016 on the legal status of Petros's designation as the sole gas aggregator in Sarawak. Regulatory compliance and criminal liability as the DGO 2016 imposes criminal penalties including imprisonment and fines for unauthorised gas aggregation activities. Company officers face personal liability risks under the regulatory regime. The mere payment to an unauthorised entity could potentially constitute a criminal offence.

Relationship Between PDA 1974 And DGO 2016

[21] The central question involves the relationship between Federal and State legislation as the PDA 1974 establishes Petronas's historical role in petroleum operations nationwide and the DGO 2016 creates a new regulatory framework specific to Sarawak in establishing a licensing regime for gas aggregators, designating Petros as the sole authorised aggregator and imposing criminal penalties for unauthorised operations. The interaction between these frameworks raises complex constitutional questions that require judicial determination.

[22] SMDS was incorporated as a joint venture company with shareholding distributed among Shell Gas Holdings (Malaysia) Limited (72%), Diamond Gas Holdings Sdn Bhd (a Mitsubishi Corporation affiliate) (14%), Petroleum Nasional Berhad (7%), and the Sarawak State Government *via* the State

Financial Secretary of Sarawak (7%). The company's primary business involves purchasing natural gas, processing it using Shell's gas to liquid (GTL) technology, and marketing the resulting GTL products. As a downstream processor, SMDS relies on a consistent gas supply.

[23] Petronas is wholly owned by the Federal Government of Malaysia through the Federal Lands Commissioner (0.01%) and the Minister of Finance (Incorporated) (99.99%). Under the Petroleum Development Act 1974, Petronas has exclusive rights regarding petroleum matters in Malaysia. The Sarawak State Government wholly owns Petros through the State Financial Secretary of Sarawak and has been designated as the sole gas aggregator for Sarawak under recent State legislation.

[24] The factual matrix underlying this dispute centres on overlapping GSA and competing claims for payment. SMDS first entered the Petronas-GSA on 17 July 2020, under which Petronas was to supply and deliver natural gas from 1 January 2021 to 31 December 2026. Subsequently, on 16 August 2024, SMDS entered the Petros-GSA from 1 August 2024 to 31 December 2026. It is crucial to note that it remains undisputed that the physical gas supplied under Petronas-GSA and Petros-GSA originates from PETRONAS. This fact was acknowledged in Petronas's letter dated 16 August 2024 and was conceded by SMDS's counsel during the 19 December 2024 hearing. The identical expiration date of the Petronas-GSA and Petros-GSA is 31 December 2026, which suggests a deliberate parallel structure.

The Conflict And SMDS's Position

[25] The conflict emerged when SMDS received competing demands from both Petronas and Petros, placing it in an impossible position:

(i) SMDS has obligations under the Petronas-GSA. This agreement was entered into when Petronas's exclusive rights under the PDA were unchallenged. All SMDS shareholders, including Petronas and the Sarawak State Government, were aware of this agreement.

(ii) following Petros's designation as sole gas aggregator, on 1 August 2024, SMDS received a letter from the Director of Gas Distribution under the Ministry of Utility and Telecommunications Sarawak (MUTS) directing it to execute a gas sales agreement with Petros by 16 August 2024. This direction came with the force of law, as s. 18 of the DGO 2016 mandates compliance with such directions, with s. 21 imposing criminal penalties for non-compliance.

The Execution Of Petros-GSA

[26] SMDS argues that Petronas did not raise any issues regarding the execution of the Petronas-GSA. However, Petronas refutes this and argues that SMDS oversimplifies the chronology of events and misrepresents Petronas's position. The sequence of events reveals that:

(i) on 1 August 2024, Petros initially approached SMDS requesting the signing of a GSA;

(ii) SMDS waited until 15 August 2024 – just one day before executing the Petros-GSA – to inform Petronas of their intentions. In their 15 August 2024 letter, SMDS stated they were "committed to continue the discussions with MPM on this matter," while preparing to execute the Petros-GSA the next day; and

(iii) Malaysia Petroleum Management (MPM), a division within Petronas, has served as the custodian, manager, and regulator of Malaysia's petroleum resources since Petronas was established in 1974.

[27] Petronas claimed this chronology demonstrates that SMDS deliberately timed their notification to Petronas to preclude any meaningful response or discussion. The timing suggests a calculated strategy rather than a genuine attempt at consultation.

[28] The situation became critical when Petronas and Petros issued invoices for the same natural gas supply. For August 2024, SMDS received invoices of approximately RM80 million from each entity, and similar duplicate invoicing continued for September 2024. The situation escalated when Petronas called on SMDS's bank guarantee for the August invoice, forcing SMDS to remit approximately RM80 million to UOB Bank.

Understanding The DGO 2016 And Its Licensing Requirements

[29] Petronas argued that SMDS's assertion that "it is an offence under the DGO 2016 if unlicensed" appears deliberately crafted to cast Petronas in a bad light. SMDS avoids the issue of whether Petronas must be licensed under the DGO 2016. SMDS asserted without attributing any need for Petronas to be licensed under the DGO 2016 because they know Petronas's position is not required to be licensed under the DGO 2016 by its status under the PDA 1974. After all, SMDS executed the Petronas-GSA explicitly under the PDA 1974 as referred to in its preamble (see encl. 2 exh. "SMDS4" of SMDS's supporting affidavit).

Legal Principles And Arguments

[30] In support of its interim relief in encl. 3, SMDS relied on these reasons:

(i) Petronas and Petros have genuine competing claims regarding the same subject matter to supply natural gas and receive payment for the supply in Sarawak. These claims arise from conflicting Federal and State legislation, creating a complex constitutional issue requiring judicial determination.

(ii) SMDS has no personal interest in the underlying dispute between Petronas and Petros on who owns or has the rights to supply natural gas in Sarawak. SMDS's only interest is ensuring it pays the correct entity and maintains an uninterrupted gas supply.

(iii) there is no collusion between SMDS and any other parties. SMDS has consistently acted transparently, informed Petronas and Petros of its actions and sought joint payment instructions. SMDS has also set aside disputed payments in interest-bearing accounts pending resolution.

[31] Petronas, in objecting, raised these issues, which this court addresses as follows:

(i) it fails to meet the high threshold required for mandatory injunctions;

(ii) there are no exceptional circumstances to justify such extraordinary relief;

(iii) damages do provide an adequate remedy;

(iv) the balance of convenience strongly favours Petronas; and

(v) the requested relief would inappropriately alter rather than preserve the *status quo*.

Nature Of The Injunction

[32] While SMDS attempted to frame its relief in prohibitory terms, the substance of the application reveals its true mandatory nature. The law is trite where the grant of interim or interlocutory mandatory injunctions are granted only in exceptional and extremely rare cases (*Sivaperuman v. Heah Seok Yeong Realty Sdn Bhd* [1978] CLJU 184; [1978] 1 LNS 184; [1979] 1 MLJ 150; *Karuppannan Chellapan v. Balakrishnen Subban* [1994] 4 CLJ 479; [1994] 3 MLJ 584). The threshold is significantly higher than that required for prohibitory injunctions. In *La Kaffa International Co Ltd v. Loob Holding Sdn Bhd & Another Appeal* [2018] 9 CLJ 593; [2018] MLJU 703, this principle is reinforced by requiring an "unusually strong and clear case" against the defendant. This heightened standard reflects the courts' recognition that mandatory injunctions fundamentally alter, rather than preserve, the *status quo.*

[33] Petronas submits that no exceptional circumstances in this case would justify the extraordinary remedy of a mandatory injunction. The current situation arose entirely from SMDS's voluntary decision to enter the Petros-GSA while fully aware of its obligations under the Petronas-GSA. SMDS knew or should have known that Petros lacked the physical capability to supply gas, yet proceeded with the agreement anyway. The broader constitutional and regulatory issues between Petronas and Petros (involving Federal and State Governments) are distinct from the straightforward

contractual relationship between SMDS and Petronas. Petros's undertaking provides SMDS with the security it seeks regarding continuous supply, negating any claim for exceptional circumstances.

[34] With due respect, I cannot agree. SMDS did not bring itself to be caught in this turmoil. SMDS wanted to fulfil all its obligations under the Petronas-GSA and later the Petros-GSA to ensure its supply of gas remained uninterrupted. SMDS cannot dictate Petronas or Petros's interests as SMDS is not part of the ongoing turmoil. I find that SMDS has an exceptionally and unusually strong and clear case for this court to rely on equity to look to the substance and intent of the application and not to the form (see: *Sivaperuman v. Heah* (*supra*)).

The "Impossible Position" Argument

[35] While SMDS presents this as a straightforward case of conflicting demands, Petronas argues that SMDS had put itself in such position since it was SMDS that chose to enter the Petros-GSA while being fully aware of their obligations under the Petronas-GSA. It was SMDS's own decision to execute a second GSA without adequately resolving its commitments under the first. Such an active role in creating the deadlock position of "not in a position nor qualified to decide on the contentions" is self-induced.

[36] I reiterate my findings above that it is no fault of SMDS that the tussle between Petronas and Petros had come about. SMDS is willing and able to make payments to the correct entity as determined by the court. This is evidenced by its actions in setting aside funds and seeking court intervention to resolve the payment dispute.

Coming With Clean Hands

[37] A fundamental principle of equity is that one who seeks equitable relief must come with clean hands. SMDS's conduct raises serious questions about their compliance with this doctrine. *Law Pang Ching & Ors v. Tawau Municipal Council* [2002] CLJU 103; [2002] 1 LNS 103; [2002] 3 MLJ 326 held that equity cannot assist a party who continues to breach their obligations while seeking the court's assistance. On this point, Petronas argues that SMDS appears to be attempting to use an injunction order as a shield to avoid their legal obligation to pay for gas supplied by PETRONAS. This strategy is evident in SMDS continuing to receive and benefit from Petronas's gas supply but seeking to avoid payment while maintaining the benefit of supply. This is inconsistent with basic principles of equity.

[38] I do not find any elements of bad intention or bad faith by SMDS making the interpleader action. What necessitates this injunction application is a determination of who SMDS should pay for its gas supply. SMDS portrayed itself as a law-abiding entity trying to fulfil all its obligations under the two GSAs.

The Payment Obligations

[39] Section 66 of the Contracts Act 1950 provides clear guidance regarding obligations when agreements are found to be void. Even if SMDS's arguments about the illegality of the Petronas-GSA were accepted (which they are not), several principles would still apply; namely, any party receiving benefits under even a void agreement must make compensation for them. The Federal Court in *Tan Chee Hoe & Sons Sdn Bhd v. Code Focus Sdn Bhd* [2014] 3 CLJ 141; [2014] MLJU 197 has clarified that this obligation exists regardless of whether the agreement is void from inception or becomes void later. SMDS's responsibility to pay for gas received would persist regardless of any questions about the agreement's validity.

[40] Again, SMDS has been assuring that it is able and willing to pay for the gas supply. One of the reliefs applied is for a designated joint account for SMDS to channel its payments pending the determination of the rightful beneficiary of the payments made in the interpleader proceedings.

[41] From the affidavits, it is clear that SMDS fulfils the test set out in *Keet Gerald Francis Noel John v. Mohd Noor @ Harun Abdullah & Ors* [1995] 1 CLJ 293; [1995] 1 MLJ 193 as both Petronas and Petros acknowledge serious issues to be tried in their respective positions and legal actions. The balance of convenience favours granting the injunction, as it would prevent irreparable harm to SMDS while maintaining the *status quo* and preventing double payment and potential breach of laws while protecting all parties' interests.

Payment And Supply Issues

[42] Petronas emphasised on the practical realities of gas supply operations in opposing the injunction. Natural gas supply involves complex upstream operations and agreements with producers, sophisticated processing to meet specifications, extensive infrastructure for delivery, continuous monitoring and quality control and significant ongoing operational costs. These technical requirements demonstrate why Petronas, unlike Petros, actually incurs substantial costs in fulfilling its supply obligations.

[43] Petronas maintains that any interim order maintaining continued supply must include a payment order. SMDS cannot logically argue that Petronas's gas supply is illegal while simultaneously seeking its continuation. By the interpleader proceedings, SMDS effectively acknowledges that the Petronas-GSA's legal position cannot be immediately determined, making any issue of illegality disputable. There is no valid basis for allegations that Petronas's gas supply is illegal, as the Petronas-GSA was entered into under GSA 1974, and no court has invalidated the application for GSA 1974 in Sarawak.

[44] To me, the interpleader action proves that the parties' positions must be kept in the *status quo* as the parties' positions have yet to be determined. SMDS made the prayer for payments to be put into a stakeholder account. There is no issue of SMDS trying to evade payments while receiving the gas supply. It has never been SMDS's contention. Its willingness to pay is put across in its relief in the application. Furthermore, given the circumstances, it would be unconscionable for Petronas or Petros to call on bank guarantees or require new ones. This is particularly true given that Petronas was aware of the DGO 2016's enactment and Petros's designation as a gas aggregator yet did not object to SMDS executing the Petros-GSA when initially informed.

[45] The treatment of bank guarantees must follow principles established in *Sumatec Engineering And Construction Sdn Bhd v. Malaysian Refining Company Sdn Bhd* [2012] 3 CLJ 401; [2012] 4 MLJ 1, distinguishing between restraining a bank from payment and restraining a beneficiary from making a call. Here, SMDS seeks to restrain the beneficiary rather than the bank, invoking this court's broader discretion to prevent unconscionable conduct. The ability of SMDS to make payments is not disputed as the payments are ready but pending the determination of the rightful beneficiary.

[46] As such, in echoing the Malay proverb at the start, I find SMDS should not be denied its rights to the gas supply by being stuck in between two tall competing giants. In determining the application for an injunction, I conclude my findings on the legal requirements as below.

Adequacy Of Damages

[47] A fundamental principle governing injunctive relief is that it should not be granted where damages would provide an adequate remedy. In this case, potential criminal liability exposure to SMDS outweighed the monetary remedies in this case. The interpleader proceedings do not only concern the monetary payment obligations but mainly the statutory compliance of Federal-State jurisdictional issues. SMDS's position does not render damages as an enabler to compensate its risk of criminal liability.

Balance Of Convenience And Justice

[48] Petronas argues that the balance tilts to its favour due to the high operational and heavy financial burdens. The financial implications are impactful, with Petronas invoicing SMDS at an average of RM75,000,000 monthly. The commercial reality of SMDS reaping benefits and making profits from the gas supply at the expense of Petronas's infrastructure and expertise also supports Petronas.

[49] The balance favours SMDS because Petronas knew about the Catch-22 situation SMDS faces with them and Petros. Petronas's acknowledgement of SMDS executing the Petros-GSA shows that Petronas knows about the

DGO 2016, including the fact that Petros would be invoicing SMDS for the gas supply. Recent media statements by Government officials suggest progress in resolving the underlying dispute. The Prime Minister and Premier have indicated that discussions on gas distribution in Sarawak between Petronas and Petros have been settled, with the Government currently fine-tuning details, parameters, and implications. As recently as 21 December 2024, the Prime Minister highlighted the importance of reaching an amicable resolution.

***Status Quo* Analysis**

[50] Following *Alfred Dunhill Limited v. Sunoptic SA & Anor* [1979] FSR 337, the court must consider what constitutes the relevant *status quo*. The *status quo* must account for all intervening events, including the DGO 2016 implementation, Petros's appointment, and the MUTS directive. It cannot simply revert to the pre-Petros-GSA situation, as Petronas suggests. *Status quo* refers to the state of affairs immediately preceding the disputed action. That would be the arrangement before SMDS signed the Petros-GSA, characterised by the regular gas supply from Petronas to SMDS. Petronas argued that the injunction sought would artificially fragment this integrated commercial arrangement, requiring Petronas to maintain supply while suspending its right to payment. This would represent a significant departure from, rather than preservation of, the *status quo*.

[51] I cannot accept Petronas's argument that Petronas faces financial impact. Compared with SMDS, SMDS faces potential criminal liability under the Sarawak State law. Following *Garden Cottage Foods Ltd v. Milk Marketing Board* [1984] AC 130, the court must consider the public interest in maintaining essential services. SMDS has demonstrated a willingness to set aside payment, mitigating any financial prejudice to Petronas.

Petros's Undertaking

[52] I accept Petronas's argument that Petros's undertaking to maintain supply does not give much weight as Petros lacks physical supply capability. Petros has no actual costs or obligations for Petros. Petros appears limited to attempting to collect payments, and the undertaking does not address Petronas's interests. The undertaking does not have any influence on determining the injunction application.

Conclusion

[53] In following the Rt Hon Lee Hun Hoe CJ (Borneo) in *TR Hamzah & Yeang Sdn Bhd v. Lazar Sdn Bhd* [1985] 1 CLJ 72; [1985] CLJ (Rep) 312; [1985] 2 MLJ 45 upholding the mandatory injunction by requiring the architectural firm TR Hamzah & Yeang Sdn Bhd that claimed $514,000 in fees for partial services on a 27-storey building project to issue a letter of release despite them not being paid. The ruling established that architects

could not withhold release letters as leverage for fee payment, as fees should be resolved through proper dispute channels. The injunction was warranted despite its exceptional nature on interlocutory applications, as it prevented the architects from effectively holding their client to ransom. The Federal Court also held that reasonable fees for partial services should be determined by courts or arbitration if not agreed upon, and clients receive an implied license to use plans upon paying reasonable fees.

[54] The dispute in the interpleader proceedings presents three potential paths to resolution through this court's determination of the same with proper adjudication with appropriate interim protection of all parties' rights while preserving the *status quo* pending the final determination of the proceedings. The direct resolution through continued negotiations between Petronas and Petros is seen as the fastest with both Governments' intervention. But until such resolution materialises, maintaining the *status quo* with the injunction is essential to protect all parties' legitimate interests, ensure compliance with applicable laws, prevent irreparable harm and preserve the effectiveness of the final determination of the interpleader proceedings.

[55] The evidence demonstrates serious issues to be tried, and the balance of convenience lies in favour of SMDS. The requested injunction would maintain the *status quo* and prevent disruption to the natural gas supply, which is crucial for SMDS's operations, double payment of substantial monthly sums, which would cause significant financial hardship, potential breaches of law due to the unresolved issues between Petronas and Petros and also prejudice to SMDS as an innocent party caught between competing claims.

Decision

[56] I hereby allow the following reliefs in encl. 3, namely prayers 1, 2, 3, 4 and 5, with costs to be in the cause.

[57] The court emphasises that these arrangements are interim and subject to modification if circumstances change or if parties reach an agreement through governmental channels. The granting of this injunction would preserve the position of all parties pending the final determination of the substantive issues while ensuring that SMDS can continue its operations without prejudice to either Petronas or Petros's ultimate rights as determined by the court.